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Surbhi Sarna

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BOSTON SCIENTIFIC CORPORATION,
BOSTON SCIENTIFIC SCIMED, INC.
AND FORTIS ADVISORS LLC,

Plaintiffs,

v.

BIOCARDIA, INC.,

Defendant.

No. 3:19-cv-05645-VC

(Related Case No. 3:20-cv-02829-VC)

**DECLARATION OF JESSICA N. LEAL
IN SUPPORT OF REQUEST FOR
JUDICIAL NOTICE**

Date: December 3, 2020
Time: 10:00 a.m.
Crm: 3, 17th Floor
Judge: Hon. Vince Chhabria

BIOCARDIA, INC.,

Counterclaimant,

v.

BOSTON SCIENTIFIC CORPORATION,
BOSTON SCIENTIFIC SCIMED, INC.
FORTIS ADVISORS LLC, AND SURBHI
SARNA,

Counterdefendants.

I, Jessica N. Leal, declare:

1. I am an attorney with the law firm Freitas & Weinberg LLP, counsel of record for the counterdefendant Surbhi Sarna and the plaintiff/counterdefendant Fortis Advisors LLC in Case No. 3:19-cv-05645-VC, and the defendant EXXclaim Capital Partners I, LP in Case No. 3:20-cv-02829-VC. I submit this declaration in support of the motions to dismiss BioCardia, Inc.'s Second Amended Counterclaim brought by Ms. Sarna and Fortis Advisors LLC and the motion to dismiss BioCardia's Second Amended Complaint brought by EXXclaim Capital Partners I, LP. I have personal knowledge of the facts set forth in this declaration and I could and would testify competently to them if called as a witness.

2. Attached hereto as **Exhibit A** is a true and correct copy of the complete set of documents my office obtained from the Secretary of State for the State of Delaware for the corporation "BioCardia, Inc." My office affixed the bottom right bates numbers [000001 to 000058] on each page for citation purposes.

3. Attached hereto as **Exhibit B** is a true and correct copy of the complete set of documents my office obtained from the Secretary of State for the State of Delaware for the corporation "BioCardia Lifesciences, Inc." My office affixed the bottom right bates numbers [000059 to 000207] on each page for citation purposes.

4. Attached hereto as **Exhibit C** is a true and correct copy of the complete set of documents my office obtained from the Secretary of State for the State of Delaware for the corporation "CareDx, Inc." My office affixed the bottom right bates numbers [000208 to 000445] on each page for citation purposes.

5. Attached hereto as **Exhibit D** is a true and correct copy of the document produced as Bates Nos. BC-BSC_0016550-16560 by the counterclaimant/plaintiff BioCardia, Inc. of Peter Altman's July 1999 employment agreement referenced in paragraphs 108 and 109 of BioCardia's Second Amended Counterclaim (Case No. 3:19-cv-05645-VC) and paragraphs 123 and 124 of BioCardia's Second Amended Complaint (Case No. 3:20-cv-02829-VC).

6. Attached hereto as **Exhibit E** is a true and correct copy of the document produced as Bates Nos. BC-BSC_0015656-15661 by the counterclaimant/plaintiff BioCardia, Inc. of Simon Stertz's "Agreement for Scientific Advisor Services" referenced in paragraph 107 of BioCardia's Second Amended Counterclaim (Case No. 3:19-cv-05645-VC) and paragraph 122 of BioCardia's Second Amended Complaint (Case No. 3:20-cv-02829-VC).

7. Attached hereto as **Exhibit F** is a true and correct copy of CareDx, Inc.'s status with the State of Delaware my office obtained through <https://corp.delaware.gov/onlinestatus/>.

8. Attached hereto as **Exhibit G** is a true and correct copy of BioCardia Lifesciences, Inc.'s status with the State of Delaware obtained through <https://corp.delaware.gov/onlinestatus/>.

9. Attached hereto as **Exhibit H** is a true and correct copy of the Agreement and Plan of Merger by and among Tiger X Medical, Inc., BioCardia, Inc., Icicle Acquisition Corp., and Jay Moyes, as the Company Representative and Steven Rubin, as the Parent Representative, dated as of August 22, 2016, available at <https://www.sec.gov/Archives/edgar/data/925741/000119312516691114/d242455dex21.htm>.

10. Attached hereto as **Exhibit I** is a true and correct copy of BioCardia, Inc.'s August 13, 2020 Form 10-Q filing with the United States Securities and Exchange Commission ("SEC"), available at https://www.sec.gov/Archives/edgar/data/0000925741/000143774920017718/bcda20200630_10q.htm.

11. Attached hereto as **Exhibit J** is a true and correct copy of BioCardia, Inc.'s April 9, 2020 Form 10-K filing with the SEC, available at https://www.sec.gov/Archives/edgar/data/925741/000143774920007405/bcda20191231_10k.htm.

12. Attached hereto as **Exhibit K** is a true and correct copy of U.S. Patent Application No. 11/016,448, filed December 17, 2004, published on June 22, 2006 as US 2006/0135961.

13. Attached hereto as **Exhibit L** is a true and correct copy of U.S. Patent Application No. 11/295,412, filed December 6, 2005, published on April 20, 2006 as US 2006/0084943.

14. Attached hereto as **Exhibit M** is a true and correct copy of U.S. Patent Application No. 12/177,338, filed July 22, 2008, published on November 20, 2008 as US 2008/0287918.

15. Attached hereto as **Exhibit N** is a true and correct copy of U.S. Patent No. 9,173,571.

16. Attached hereto as **Exhibit O** is a true and correct copy of U.S. Patent No. 10,610,149.

17. Attached hereto as **Exhibit P** is a true and correct copy of U.S. Patent No. 10,639,016.

18. Attached hereto as **Exhibit Q** is a true and correct copy of U.S. Patent No. 10,646,209.

19. Attached hereto as **Exhibit R** is a true and correct copy of the March 2010 published article “The Origin and Pathogenesis of Epithelial Ovarian Cancer: A Proposed Unifying Theory” by Robert J. Kurman, MD and Ie-Ming Shih, MD, PhD., available at https://journals.lww.com/ajsp/Fulltext/2010/03000/The_Origin_and_Pathogenesis_of_Epithelial_Ovarian.18.aspx.

I declare under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Executed this 24th day of September, 2020, at San Francisco, California.

/s/Jessica N. Leal

Jessica N. Leal